

REMARKS

This paper is presented in response to the Office Action. By this paper, claims 1-7, 13, 16-18, 20-31, 33, 35, and 37 are canceled and claims 8, 10-12, 14, and 15 are amended. Claims 19, 32, and 34 were cancelled in previous papers. Claims 8-12, 14, 15, and 36 are now pending in view of the aforementioned cancellations.

Reconsideration of the application is respectfully requested in view of the aforementioned amendments and the following remarks. For the convenience and reference of the Examiner, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Office Action.

I. General Considerations

a. Claim amendments and/or cancellations

Applicants respectfully note that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the patentable distinctions between any cited references and the invention, example embodiments of which are set forth in the claims of this application. Rather, and in consideration of the fact that various factors make it impractical to enumerate all the patentable distinctions between the invention and the cited art, as well as the fact that the Applicants have broad discretion in terms of the identification and consideration of the base(s) upon which the claims distinguish over the cited references, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration by the Applicants, in this case or any other, of: additional or alternative distinctions between the invention and the cited references; and/or, the merits of additional or alternative arguments.

With specific reference now to the claim amendments, Applicants note that while claims 8, 10-12, 14, and 15 have been amended herein and claims 1-7, 13, 16-18, 20-31, 33, 35, and 37 have been cancelled herein, such amendments and cancellations have been made in the interest of advancing this case to early allowance. Notwithstanding, Applicants, may, on further consideration, determine that claims of broader scope than those now presented are supported. Accordingly, Applicants hereby reserve the right to file one or more continuing applications with claims broader in scope than the claims now presented.

Consistent with the points set forth above, Applicants submit that neither the claim amendments set forth herein, nor any other claim amendments or statements advanced by the Applicants in this or any related case, constitute or should be construed as, an implicit or explicit surrender or disclaimer of claim scope with respect to the cited, or any other, references.

b. Remarks

Applicants note that the remarks, or a lack of remarks, set forth herein are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicants, of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner, and/or the merits of additional or alternative arguments.

II. Objection to Claim 12

The Examiner has objected to claim 12 as allegedly being a substantial duplicate of claim 10. Applicants submit that in view of amendments made herein to claims 10 and 12, the objection to claim 12 has been overcome and should be withdrawn.

III. Rejection of Claims 1, 3, 6-8, and 11 under 35 U.S.C. § 102

Applicants respectfully note that a claim is anticipated under 35 U.S.C. § 102(a), (b), or (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *MPEP* § 2131.

The Examiner has rejected claims 8-10 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2001/0019566 to Jewell ("*Jewell 1*"). The Examiner has rejected claims 8-10 and 36 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,729,566 to Jewell ("*Jewell 2*"). Applicants respectfully disagree but submit that for at least the reasons set forth below, the rejections of claims 8-10 and 36 are moot and should accordingly be withdrawn.

By this paper, Applicants have amended independent claim 8 to recite that the "second mirror compris[es] a partially oxidized layer for confining current." Support for this amendment to claim 8 can be found, for example in claim 13 as-filed. In contrast, the Examiner has not established that *Jewell 1* or *Jewell 2* or any other reference teaches or suggests this limitation in combination with the other

limitations of rejected claim 8. In fact, the Examiner has conceded that, in reference to the cited art, “[t]here is not taught the second mirror comprising partially oxidized layer for confining current...” Page 6, paragraph 7, of the Office Action. *Emphasis added.*

In light of the foregoing, Applicants respectfully submit that the Examiner has not established that *Jewell 1* or *Jewell 2* anticipates amended claim 8, at least because the Examiner has not established that each and every element as set forth in claim 8 is found in *Jewell 1* or *Jewell 2*, because the Examiner has not established that the identical invention is shown in *Jewell 1* or *Jewell 2* in as complete detail as is contained in claim 8, and because the Examiner has not shown that *Jewell 1* or *Jewell 2* discloses the elements arranged as required by claim 8. Applicants thus respectfully submit that the rejection of claim 8, as well as the rejection of corresponding dependent claims 9, 10, and 36, should be withdrawn.

IV. Rejection of Claims 11 and 12 under 35 U.S.C. § 103

Applicants respectfully note at the outset that in order to establish a *prima facie* case of obviousness, it is the burden of the Examiner to demonstrate that three criteria are met: first, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; second, there must be a reasonable expectation of success; and third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP § 2143*.

The Examiner has rejected claims 11 and 12 under 35 U.S.C. § 103(a) as being obvious over *Jewell 2* in view of U.S. Patent No. 5,881,085 to *Jewell* (“*Jewell 3*”). Applicants respectfully disagree.

Claims 11 and 12 depend from claim 8, which, as noted previously, has been amended herein. By virtue of their dependence from independent claim 8, dependent claims 11 and 12 now each require a “second mirror comprising a partially oxidized layer for confining current ...” As noted above however, the Examiner has not established that *Jewell 2*, either alone or in combination with any other reference, teaches or suggests the aforementioned limitation in combination with the other limitations of claims 11 and 12.

Accordingly, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness with respect to claims 11 and 12, at least because the Examiner has not established that *Jewell 2*, when combined with *Jewell 3* in the purportedly obvious fashion, teaches or suggests all the limitations of the rejected claims. Applicants thus respectfully submit that the obviousness rejections of claims 11 and 12 should accordingly be withdrawn.

V. Allowable Subject Matter

The Examiner has indicated that claims 13-15 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response thereto, and as noted above, Applicants have amended claim 8 to incorporate the limitations specifically recited in claim 13, and has cancelled claim 13. Please note that Applicants have not incorporated the limitations of the intervening claims (claims 9-12) into claim 8.

CONCLUSION

In view of the remarks submitted herein, Applicants respectfully submit that each of the pending claims 8-12, 14, 15, and 36 is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 17th day of October 2007.

Respectfully submitted,

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